

1 Kathleen Sullivan (SBN 242261)  
kathleensullivan@quinnmanuel.com  
2 QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
3 51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
4 Facsimile: (212) 849-7100

5 Sean S. Pak (SBN 219032)  
seanpak@quinnmanuel.com  
6 Amy H. Candido (SBN 237829)  
amycandido@quinnmanuel.com  
7 John M. Neukom (SBN 275887)  
johnneukom@quinnmanuel.com.  
8 QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
9 50 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94111  
10 Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

11 David Nelson (*admitted pro hac vice*)  
davenelson@quinnmanuel.com  
12 QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
13 500 W Madison St, Suite 2450  
Chicago, IL 60661  
14 Telephone: (312) 705-7465  
15 Facsimile: (312) 705 7401

16 Attorneys for Plaintiff Cisco Systems, Inc.

17 Steven Cherny (*admitted pro hac vice*)  
steven.cherny@kirkland.com  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

18 Adam R. Alper (SBN 196834)  
adam.alper@kirkland.com  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

19 Michael W. De Vries (SBN 211001)  
michael.devries@kirkland.com  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

20 CISCO SYSTEMS, INC.,

21 Plaintiff,

22 vs.

23 ARISTA NETWORKS, INC.,

24 Defendant.

25 CASE NO. 5:14-cv-5344-BLF (NC)

26 **CORRECTED DECLARATION OF SARA  
E. JENKINS IN SUPPORT OF  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL CONFIDENTIAL  
INFORMATION IN CISCO'S  
OPPOSITIONS TO ARISTA'S MOTIONS  
IN LIMINE**

27 02099-00004/8439237.1

28 CORRECTED DECLARATION OF SARA E. JENKINS IN SUPPORT OF CISCO'S  
ADMINISTRATIVE MOTION TO FILE UNDER SEAL  
Case No. 5:14-cv-05344-BLF (NC)

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**DECLARATION OF SARA E. JENKINS**

I, Sara E. Jenkins, declare as follows:

1           **1.** I am an attorney licensed to practice in the State of California and am admitted to  
2 practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart &  
3 Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of  
4 the matters set forth in this Declaration, and if called as a witness I would testify competently to  
5 those matters.

6           **2.** I make this declaration in support of Cisco’s Motion to File Under Seal  
7 Confidential information filed in connection with Cisco’s Oppositions to Arista’s Motions *in  
8 Limine*. I make this declaration in accordance with Civil Local Rule 79-5(d)(1)(A).

9           **3.** As oppositions to Motions *in Limine*, Cisco’s Oppositions are non-dispositive. In  
10 this context, materials may be sealed so long as the party seeking sealing makes a “particularized  
11 showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v.  
12 City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm  
13 Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule  
14 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are  
15 privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, that  
16 the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly  
17 tailored to seek sealing only of sealable material.” *Id.*

18           **4.** Pursuant to Civil L.R. 79-5(e), good cause exists to seal the documents identified in  
19 the Sealing Motion as containing Cisco’s confidential information, also set forth below, because  
20 the information sought to be sealed reflects confidential information that “give[s] [Cisco] an  
21 opportunity to obtain an advantage over competitors who do not know or use it.” *In re Elec. Arts,  
22 Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt b):  
23  
24  
25

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 1	Highlighted Portions	Arista
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 3	Highlighted Portions	Arista
Cisco's Opposition to Arista's Motion <i>in Limine</i> No. 5	Highlighted Portions	Arista
Exhibit 1 to the Declaration of John M. Neukom in Support of Cisco's Oppositions to Arista's Motions <i>in Limine</i> ("Neukom Declaration")	Entire	Arista
Exhibit 5 to the Neukom Declaration	Entire	Arista Cisco
Exhibit 17 to the Neukom Declaration	Entire	Arista
Exhibit 18 to the Neukom Declaration	Entire	Cisco
Exhibit 19 to the Neukom Declaration	Entire	Cisco
Exhibit 20 to the Neukom Declaration	Entire	Cisco
Exhibit 21 to the Neukom Declaration	Entire	Cisco
Exhibit 22 to the Neukom Declaration	Entire	Cisco

02099-00004/8439237.1

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CORRECTED DECLARATION OF SARA E. JENKINS IN SUPPORT OF CISCO'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

<b>Document</b>	<b>Portions to Be Filed Under Seal</b>	<b>Party With Claim of Confidentiality</b>
Exhibit 23 to the Neukom Declaration	Entire	Cisco
Exhibit 24 to the Neukom Declaration	Entire	Cisco
Exhibit 28 to the Neukom Declaration	Entire	Arista Cisco
Exhibit 30 to the Neukom Declaration	Entire	Arista Cisco
Exhibit 31 to the Neukom Declaration	Entire	Arista

5. Exhibit 5 is an excerpt from the April 25, 2016 deposition transcript of Charles Giancarlo which was designated as “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential and sensitive business information regarding Cisco’s competitive strategies and prior litigation. Maintaining this information as confidential provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298 F. App’x at 569. Moreover, disclosing this information to Cisco’s competitors would harm Cisco’s business by, *inter alia*, allowing Cisco’s competitors to learn of Cisco’s strategies. This would “harm [Cisco’s] competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

6. Exhibit 18 is an excerpt from the December 18, 2015 deposition transcript of Abhay Roy which was designated as “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential and sensitive information about the development of Cisco’s products. As such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business performance, structure, and

02099-00004/8439237.1

1 finances that could be used to gain unfair business advantage against them,” are properly sealed);  
 2 *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at \*2 (N.D. Cal. Aug.  
 3 20, 2014) (compelling reasons exist to seal documents containing “highly sensitive information  
 4 regarding [a party’s] product architecture and development.”)

5       **7.**      Exhibit 19 is an internal Cisco email that was designated as “Highly Confidential –  
 6 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information  
 7 about Cisco’s product development and technology. As such, there are compelling reasons to seal  
 8 this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at \*2 (N.D. Cal.  
 9 Apr. 4, 2016) (documents containing “information about [a party’s] business performance,  
 10 structure, and finances that could be used to gain unfair business advantage against them,” are  
 11 properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at \*2  
 12 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing “highly  
 13 sensitive information regarding [a party’s] product architecture and development.”)

14       **8.**      Exhibit 20 is an internal Cisco presentation that was designated as “Highly  
 15 Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains  
 16 confidential information about Cisco’s product and business development and technology. As  
 17 such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-  
 18 BLF, 2016 WL 1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing “information  
 19 about [a party’s] business performance, structure, and finances that could be used to gain unfair  
 20 business advantage against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-  
 21 04613-BLF, 2014 WL 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal  
 22 documents containing “highly sensitive information regarding [a party’s] product architecture and  
 23 development.”)

24       **9.**      Exhibit 21 is an internal Cisco email that was designated as “Highly Confidential –  
 25 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information  
 26 about Cisco’s product and business development and technology. As such, there are compelling

27 02099-00004/8439237.1

1 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,  
 2 at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business  
 3 performance, structure, and finances that could be used to gain unfair business advantage against  
 4 them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL  
 5 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing  
 6 “highly sensitive information regarding [a party’s] product architecture and development.”)

7       **10.**      Exhibit 22 is an internal Cisco email that was designated as “Highly Confidential –  
 8 Attorneys’ Eyes Only” under the Protective Order. This exhibit contains confidential information  
 9 about Cisco’s product and business development and technology. As such, there are compelling  
 10 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,  
 11 at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing “information about [a party’s] business  
 12 performance, structure, and finances that could be used to gain unfair business advantage against  
 13 them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL  
 14 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing  
 15 “highly sensitive information regarding [a party’s] product architecture and development.”)

16       **11.**      Exhibit 23 is an email that was designated as “Highly Confidential – Attorneys’  
 17 Eyes Only” under the Protective Order. This exhibit contains confidential information regarding a  
 18 Cisco license. As such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*,  
 19 No. 5:15-cv-03347-BLF, 2016 WL 1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (documents  
 20 containing “information about [a party’s] business performance, structure, and finances that could  
 21 be used to gain unfair business advantage against them,” are properly sealed); *Delphix Corp. v.*  
 22 *Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at \*2 (N.D. Cal. Aug. 20, 2014)  
 23 (compelling reasons exist to seal documents containing “highly sensitive information regarding [a  
 24 party’s] product architecture and development.”) Maintaining this information as confidential  
 25 provides Cisco with an “opportunity to obtain an advantage over competitors” who may compete  
 26 with Cisco and gather information regarding the same less optimally than Cisco. *Elec. Arts*, 298

27 02099-00004/8439237.1

1 F. App'x at 569. Moreover, disclosing this information to Cisco's competitors would harm  
 2 Cisco's business by, *inter alia*, allowing Cisco's competitors to learn of Cisco's strategies. This  
 3 would "harm [Cisco's] competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,  
 4 598 (1978).

5       **12.**      Exhibit 24 is a copy of a letter that was designated as "Highly Confidential –  
 6 Attorneys' Eyes Only" under the Protective Order. This exhibit contains confidential information  
 7 regarding a Cisco license and Cisco's competitive strategies. As such, there are compelling  
 8 reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186,  
 9 at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing "information about [a party's] business  
 10 performance, structure, and finances that could be used to gain unfair business advantage against  
 11 them," are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL  
 12 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents containing  
 13 "highly sensitive information regarding [a party's] product architecture and development.")  
 14 Maintaining this information as confidential provides Cisco with an "opportunity to obtain an  
 15 advantage over competitors" who may compete with Cisco and gather information regarding the  
 16 same less optimally than Cisco. *Elec. Arts*, 298 F. App'x at 569. Moreover, disclosing this  
 17 information to Cisco's competitors would harm Cisco's business by, *inter alia*, allowing Cisco's  
 18 competitors to learn of Cisco's strategies. This would "harm [Cisco's] competitive standing."  
 19 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978).

20       **13.**      Exhibit 28 is a confidential Cisco document that was designated as confidential in  
 21 the ITC proceedings and is deemed to have been produced as "Highly Confidential – Attorneys'  
 22 Eyes Only" under the Protective Order in this matter. This exhibit contains confidential  
 23 information regarding Cisco's technology, business and product architecture. As such, there are  
 24 compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL  
 25 1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing "information about [a party's]  
 26 business performance, structure, and finances that could be used to gain unfair business advantage

27 02099-00004/8439237.1

1 against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014  
 2 WL 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal documents  
 3 containing “highly sensitive information regarding [a party’s] product architecture and  
 4 development.”)

5       **14.**      Exhibit 30 is a confidential Cisco document that was designated as “Highly  
 6 Confidential – Attorneys’ Eyes Only” under the Protective Order. This exhibit contains  
 7 confidential information regarding Cisco’s technology, business and product architecture. As  
 8 such, there are compelling reasons to seal this exhibit. *See Schwartz v. Cook*, No. 5:15-cv-03347-  
 9 BLF, 2016 WL 1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (documents containing “information  
 10 about [a party’s] business performance, structure, and finances that could be used to gain unfair  
 11 business advantage against them,” are properly sealed); *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-  
 12 04613-BLF, 2014 WL 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (compelling reasons exist to seal  
 13 documents containing “highly sensitive information regarding [a party’s] product architecture and  
 14 development.”)

15       **15.**      Cisco also files this motion to seal to provide Arista Networks, Inc. the opportunity  
 16 to file a declaration pursuant to Civil Local Rule 79-5(e) regarding the confidentiality of the other  
 17 documents identified in the chart above.

18

19                  I declare under penalty of perjury under the laws of the State of California that the  
 20 foregoing is true and correct, and that this declaration was executed in Redwood Shores,  
 21 California, on October 8, 2016.

22

23

*/s/ Sara E. Jenkins*

Sara E. Jenkins

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02099-00004/8439237.1

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CORRECTED DECLARATION OF SARA E. JENKINS IN SUPPORT OF  
 CISCO’S ADMINISTRATIVE MOTION TO FILE UNDER SEAL

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